



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

MAY 09 1986

Chapman & Co.
Combe Fill Corp.

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In re : Case No. 81 B 12024 (BRL)
COMBE FILL CORPORATION, :
Debtor. : NOTICE OF HEARING ON
ORDER APPROVING COMPROMISE
OF ENVIRONMENTAL PROTECTION
AGENCY ADMINISTRATIVE CLAIM
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PLEASE TAKE NOTICE, that a hearing will be held before the Honorable Burton R. Lifland, Bankruptcy Judge, in Room 234 of the United States Courthouse, Foley Square, New York, New York, on the 27th day of May, 1986, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, on the Trustee's application for an Order approving and confirming the Trustee's proposed compromise of the United States Environmental Protection Agency's (the "EPA") administrative claim for hazardous waste response expenditures of \$317,409 at the Debtor's two land-fill sites. The proposed compromise provides for the payment of \$50,000 to the EPA in full and final settlement of all EPA claims against the Estate.

PLEASE TAKE FURTHER NOTICE, that a complete copy of the Trustee's application may be inspected at the office of the Clerk of the Bankruptcy Court, Room 230, United States Courthouse, Foley Square, New York, New York, during regular Court hours. Objections, if any, to the application must be filed with the Clerk of the Bankruptcy Court and the undersigned no later than May 22, 1986.

Dated: New York, New York
May 6, 1986

BRUCE D. SCHERLING, P.C.
Attorneys for Trustee
6 East 45th Street
New York, New York 10017
(212) 972-8100

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Case No. 81 B 12024 (BRL)
COMBE FILL CORPORATION, : APPLICATION FOR ORDER
Debtor. : APPROVING COMPROMISE OF
: ENVIROMENTAL PROTECTION
: AGENCY ADMINISTRATIVE
: CLAIM
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TO THE HONORABLE BURTON R. LIFLAND, BANKRUPTCY JUDGE:

Bruce D. Scherling, Trustee of the Estate of Combe Fill Corporation, Debtor ("Applicant") by his attorneys, Bruce D. Scherling, P.C., as and for his application respectfully sets forth and alleges:

1. On October 19, 1981, Combe Fill Corporation (the "Debtor") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Code"). Applicant was appointed Interim Trustee on October 19, 1982, became Trustee on December 2, 1981, pursuant to 11 U.S.C. 702(d), qualified and currently serves in that capacity.

2. The Trustee proposes to compromise for \$50,000 the administrative claim filed by the United States Environmental Protection Agency ("EPA") in the amount of \$317,409. This application seeks an Order approving and confirming the proposed compromise, subject to the terms and conditions set forth in the

stipulation annexed as Exhibit 1.

3. The Debtor operated two Solid Waste disposal landfill sites, one in Chester Township, New Jersey ("Combe Fill South") and one in Mount Olive Township, New Jersey ("Combe Fill North"). The Combe Fill South site was still operating at the time of Applicant's appointment as Trustee; the Combe Fill North site was closed. Subsequent to Applicant's appointment as Trustee, both of the Debtor's landfill sites were placed on the National Priorities List by the EPA as hazardous waste sites pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").

4. In January of 1986, EPA filed a claim for reimbursement of administrative expenses consisting primarily of funds advanced to the State of New Jersey under a cooperative agreement for a Remedial Investigation and Feasibility Study and other hazardous waste response expenses.

5. On March 27, 1986, the Trustee filed an application to expunge the EPA claim alleging (1) that the response expenses incurred by the EPA were not allowable as an administrative claim as they did not serve to protect or preserve the estate or provide any benefit to the estate and its creditors, and (2) the expenses claimed were identical to those compromised by the State of New Jersey Department of Environmental Protection ("NJDEP") by court order entered January 17, 1984, and hence the EPA was barred and estopped from reasserting said claims.

Best Interest of the Estate

6. The proposed compromise is clearly in the best interest of the Estate and its creditors. There are no further estate assets to be marshalled or administered. All other administrative and priority claims have been fixed and paid.

7. Accordingly, Applicant will be able to close the estate and issue a significant final dividend to unsecured creditors if Court orders are entered (1) compromising the EPA claim, (2) authorizing the abandonment of the landfill sites and (3) fixing final professional fees.

Detrimental to Estate to litigate EPA Claim

8. There is no interest of the estate or its creditors that would be served by litigating the validity of the EPA's claim. The Supreme Court expressly excepted from its decision in Quanta Resources the issue as to whether a governmental entity's claim for reimbursement of cleanup expenditures was an allowable administrative expense. Midlantic National Bank v. New Jersey Department of Environmental Protection, 106 S.Ct. 755, F.N.2 at p. 758. At least one decision issued prior to the Supreme Court decision in Quanta held in the negative (see In re Wall Tube and Metal Products Co., 56 B.R. 918 (Bkrtcy. E.D. Tenn. 1986)) while other courts have allowed such claims (see In re T.P. Long Chemical, Inc., 45 B.R. 278 (N.D. Ohio 1985)). Consequently, the outcome of such litigation is at best uncertain.

9. What is certain is that such litigation, and litigation on the collateral issue as to the Trustee's right to abandon the landfill sites, will be lengthy, complex and costly to the estate. The EPA has advised Applicant that it considers these issues to be of sufficient gravity to insure the exhaustive appeal of any adverse decision.

10. It is thus reasonable to presume that the legal expenses necessary to prosecute the Trustee's objection will be substantial, with no prospective monetary benefit to the estate except what may be a de minimus difference between the sum total of such expenses and the \$50,000 compromise amount. Moreover, while such litigation continued, the Trustee would be unable to close the estate and issue a final dividend.

Compromise is Fair and Reasonable

11. When all of the above-stated factors are considered, the compromise must be held to be fair and reasonable. The EPA has effectively reduced its claim by \$257,000 and has agreed to make payment of the \$50,000 conditional on a final Order authorizing the Trustee to abandon the landfill sites. The proposed compromise payment still leaves sufficient funds in the Estate to pay professional fees and a significant final dividend on allowed unsecured claims.

12. No prior application for the relief sought herein

has been made to this or any other court.

WHEREFORE, Applicant respectfully requests that the Court grant the relief requested in all respects and approve and confirm the compromise of the EPA administrative claim in accordance with the terms and conditions set forth in the annexed stipulation, and for such other and further relief as to this Court may deem just and proper.

Dated: New York, New York
May 6, 1986

BRUCE D. SCHERLING, P.C.
Attorneys for Trustee

By: /s/
A Member of the Firm
6 East 45th Street
New York, New York 10017
(212) 972-8100

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re :
COMBE FILL CORPORATION, : Case No. 81 B 12024 (BRL)
Debtor. : STIPULATION COMPROMISING
: ADMINISTRATIVE CLAIM
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WHEREAS, Bruce D. Scherling, is the duly appointed, qualified and acting Chapter 7 Trustee of the Combe Fill Corporation (the "Debtor"); and

WHEREAS, a claim for administrative expenses in the sum of \$317,409 was filed by the United States on behalf of the United States Environmental Protection Agency ("EPA"); and

WHEREAS, on March 27, 1986, the Trustee filed and noticed an application to expunge the administrative claim filed on behalf of the EPA; and

WHEREAS, on March 27, 1986, the Trustee filed and noticed an application to abandon the Debtor's land fill sites and records; and

WHEREAS, the EPA opposes the Trustee's application to abandon the Debtor's land fill sites; and

WHEREAS, the Trustee deems it to be in the best interest of the Estate and its creditors to compromise the EPA claim so as to avoid the time, expense and delay of litigation, to expedite the abandonment of the Debtor's landfill sites and to allow the issuance of a final dividend to creditors; and

WHEREAS, the EPA deems it appropriate to permit the Trustee to abandon the landfill sites and records upon compliance with the terms and conditions of this compromise;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned as follows:

1. The Trustee and EPA hereby agree to compromise the EPA's administrative claim for the sum of \$50,000, subject to the terms and conditions set forth herein.

2. This compromise is subject to satisfaction of both of the following conditions:

- (a) A Bankruptcy Court Order approving this compromise is entered and becomes final and no longer subject to appeal;

- (b) A Bankruptcy Court Order authorizing the Trustee to unconditionally abandon the Debtor's landfill sites and discharging Bruce D. Scherling, as Trustee and individually and the Debtor's Estate from any and all liabilities with respect to the

administration of said landfill sites is entered and becomes final and no longer subject to appeal.

3. The Trustee shall remit said \$50,000 settlement payment to the EPA at such time when the Orders of the Bankruptcy Court approving and confirming this compromise and the abandonment of the landfill sites became final and no longer subject to appeal. At such time, the Trustee shall also turn over all Debtor business and dumping records to the EPA subject to the condition that any other duly authorized governmental entity or interested party shall have access thereto.

4. The fifty thousand (\$50,000) dollars compromise payment hereunder shall be in full and final settlement of all claims by the EPA against Bruce D. Scherling, as Trustee and Individually and the Debtor Estate.

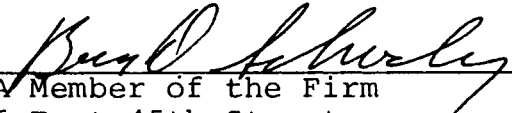
5. This Order shall not affect such claims as the EPA may assert against persons and entities, other than Bruce D. Scherling, as Trustee and Individually and the Estate, for recovery of costs or for other remedies with respect to the Debtor landfill sites.

6. The Trustee shall, within twenty (20) days after the execution of this Stipulation, make application to the Bankruptcy Court on notice to all creditors and interested parties for an Order approving and confirming this compromise.

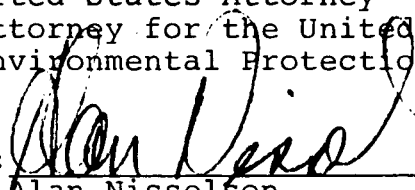
7. If, for any reason, the Bankruptcy Court shall fail to enter Orders approving and confirming the compromise of the EPA administrative claim and the abandonment of the Debtor's landfill sites, or if for any reason said Orders do not become final and no longer subject to appeal, then, in that event, this compromise shall be null and void and of no further validity or effect.

Dated: New York, New York
May 1, 1986

BRUCE D. SCHERLING, P.C.
Attorneys for the Trustee

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